

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 17-215(1)&(2) (DWF/BRT)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Steven B. Markusen (1) and
Jay C. Cope (2),

Defendants.

This matter is before the Court upon Defendant Jay C. Cope's ("Defendant Cope") objections (Doc. No. 74) to Magistrate Judge Becky R. Thorson's Report and Recommendation (Doc. No. 73) insofar as it recommends that Defendant Cope's Motion for Severance be denied. The government filed a response to Defendant's objections on August 14, 2018. (Doc. No. 76.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Defendant Cope's objections.

In the Report and Recommendation, Magistrate Judge Thorson concluded that joinder is proper under Rule 8(b) because "the Indictment alleges a single, cooperative scheme to defraud the Funds in several ways." (Doc. No. 73 at 4.) The Magistrate Judge rejected Defendant Cope's argument that he would be prejudiced by a single trial because

the defenses are likely to be irreconcilable, and the jury will be unable to compartmentalize the evidence against Defendants Cope and Markusen. (*Id.* at 4-5.) In rejecting those concerns as generalized, Magistrate Judge Thorson found that Defendant Cope failed to “explain how the defenses to be presented at trial would be irreconcilable” and concluded that using a limiting jury instruction would cure any potential prejudice. (*Id.* at 5.) Magistrate Judge Thorson therefore recommended denying Defendant Cope’s Motion for Severance.

Defendant Cope objects to the Magistrate Judge’s recommendation, arguing that “a joint trial would be unfairly prejudicial” because “[i]t appears likely at trial that the government would present more evidence against Mr. Markusen than against Mr. Cope, and present evidence of a different type.” (Doc. No. 74 at 2.) Defendant Cope claims that these concerns cannot be addressed by a limiting instruction. (*Id.*)

The Court disagrees. The Court concludes, as did the Magistrate Judge, that Defendant Cope has failed to demonstrate he is entitled to severance. As the Magistrate Judge noted, any potential prejudice that Defendant Cope will face in the form of juror confusion can be adequately cured by using a limiting jury instruction. *See U.S. v. Frank*, 354 F.3d 910, 920 (8th Cir. 2004).

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Defendant Jay C. Cope's objections (Doc. No. [74]) to Magistrate Judge Becky R. Thorson's July 18, 2018 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Becky R. Thorson's July 18, 2018 Report and Recommendation (Doc. No. [73]) is **ADOPTED**.

3. Defendant Jay C. Cope's Motion for Severance (Doc. No. [44]) is **DENIED**.

Dated: August 31, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge